DAMAGES — MENTAL DISTRESS AS ELEMENT OF DAMAGE — PARASITIC DAMAGES IN ACTION OF TRESPASS. — The plaintiff's landlord, wrongfully entering her premises, frightened her badly by a violent disturbance. There was no physical injury either simultaneous with the fright or resulting from it. *Held*, that in an action for the wrongful entry the plaintiff may recover for her mental suffering. *Nordgren* v. *Lawrence*, 133 Pac. 436 (Wash.).

The principal case does not involve the question of whether mental suffering is sufficient damage to sustain a cause of action for negligence without physical impact. *Cf. Spade* v. *Lynn & Boston R. Co.*, 168 Mass. 285. It rests on the principle, now quite widely accepted, that where an independent cause of action exists, mental suffering is a proper element of damage. *Bouillon* v. *Laclede Gaslight Co.*, 129 S. W. 401, 148 Mo. App. 462; *Tennessee Cent. R. Co.* v. *Brasher's Guardian*, 97 S. W. 349, 29 Ky. Law Rep. 1277. A common illustration is a suit for wrongful ejection from railway premises under humiliating circumstances. *Davis* v. *Tacoma Ry. & Power Co.*, 77 Pac. 209, 35 Wash. 209. Another is the mutilation or the disinterment of a corpse. *Larson* v. *Chase*, 50 N. W. 238, 47 Minn. 307. The limitation, that the mental suffering must have been wilfully inflicted, seems to be applied in some jurisdictions. *Wyman* v. *Leavitt*, 71 Me. 227; *Buchanan* v. *Stout*, 108 N. Y. Supp. 38. It is submitted that this is incorrect. Granting that the act was wrongful in the legal sense, and that fright is damage, the plaintiff should recover for all proximate mental suffering. The danger, made much of in analogous cases, of a multitude of groundless suits based on mental injury alone is not present here, since the plaintiff is already in court on a good cause of action. *Cf. Spade* v. *Lynn & Boston R. Co.*, 168 Mass. 285; *Dulieu* v. *White*, 2 K. B. 669. The fact that such damages would not have been allowed in a technical action of trespass does not seem to trouble modern courts.

DEATH BY WRONGFUL ACT — DAMAGES IN STATUTORY ACTION — RIGHT OF DAUGHTER NOT SUPPORTED BY FATHER, TO SUE FOR HIS DEATH. — An administratrix sues under the Employers' Liability Act for death negligently caused. One of the beneficiaries was a married daughter who had not been supported by the deceased. *Held*, that there can be no recovery for the benefit of the non-dependent child. *Gulf, Colorado, & Santa Fe R. Co.* v. *McGinnis*, 228 U. S. 173.

This case is interesting as showing that the Supreme Court regards recovery under the Employers' Liability Act as a new right given to the beneficiaries through the administrator as representative, and not as a right left as a legacy by the deceased. It being a right of the beneficiaries, damage to them must be shown for a recovery. For a discussion of the principles here involved, see 21 HARV. L. REV. 636.

DEATH BY WRONGFUL ACT — DEFENSES TO STATUTORY LIABILITY — EFFECT OF CONTRIBUTORY NEGLIGENCE OF BENEFICIARY. — Under the New York statute an administrator sues a street railway company for negligently causing the death of his intestate. The administrator was the sole beneficiary under the death statute, and his negligence had contributed to the disaster. *Held*, that the plaintiff may recover. *McKay* v. *Syracuse Rapid Transit Co.*, 101 N. E. 885 (N. Y.).

There are two types of death statutes. When the right of action is given to the next of kin as such, it is law everywhere that his contributory negligence will bar. *St. Louis, I. M. & S. R. Co.* v. *Freeman*, 36 Ark. 41; *Baltimore & Ohio R. Co.* v. *The State*, 30 Md. 47. When the right of action is given to the administrator for the benefit of the next of kin, here again the weight of authority is that the contributory negligence of the beneficiary is a bar. *Richmond, etc. R. Co.* v. *Martin's Adm'r*, 102 Va. 201. In a few jurisdictions, however,

the right of action is regarded as if it were that of the deceased, and recovery is allowed in spite of the beneficiary's contributory negligence. *Warren* v. *Manchester St. Ry.*, 70 N. H. 352, 47 Atl. 735; *Wymore* v. *Mahaska Co.*, 78 Ia. 396. The decision of the principal case settles the New York law, which had previously been in an uncertain state, in favor of recovery by the negligent beneficiary. On theory the recovery is essentially a compensation to the next of kin, the interposition of the administrator being a mere matter of procedure. This is further illustrated by the refusal to allow one not dependent on the deceased to recover under the federal statute. See 27 HARV. L. REV. 87. To allow this recovery when the beneficiary has been guilty of contributory negligence is to compensate him at the expense of his co-tortfeasor. See 21 HARV. L. REV. 636.

FEDERAL COURTS — JURISDICTION AND POWERS IN GENERAL — JURISDICTION WHERE STATE COURT INTERPRETS FEDERAL STATUTES TOO BROADLY. — The plaintiff as administratrix sued the defendant company for damages occasioned by the death of her husband while in its service, relying upon the federal "Hours of Service Act" and "Employer's Liability Law." The defendant requested a verdict directed in its favor, which was refused. A judgment for the plaintiff was affirmed by the Supreme Court of Kentucky. 145 Ky. 427, 140 S. W. 672. The defendant now seeks a writ of error from the United States Supreme Court. *Held*, that the Supreme Court has jurisdiction. *St. Louis, I. M. & S. R. Co.* v. *McWhirter*, 33 Sup. Ct. 858.

When an action is begun in a federal court the case may be taken directly to the Supreme Court upon any constitutional question, irrespective of the lower court's decision. Act of March 3, 1891, c. 517, § 5; 26 STAT. AT LARGE, 828. But a writ of error to a state court can only be had when a party claims and is denied some federal right. U. S. REV. STAT. § 709; U. S. COMP. STAT. 1901, 575; JUDICIAL CODE, § 237. The original purpose of allowing the Supreme Court this power of review was to prevent impairment of federal authority. See *Commonwealth Bank of Ky.* v. *Griffith*, 14 Peters (U. S.), 56, 58. Where the federal right is sustained, there is no necessity for review upon this score, and it was felt that to allow either party to appeal might put too much power in the hands of the federal courts. *Gordon* v. *Caldcleugh*, 3 Cranch (U. S.), 268; *Missouri* v. *Andriano*, 138 U. S. 496. See *Hale* v. *Gaines*, 22 Howard (U. S.), 144, 160. But fear of encroachment on state power by federal courts is now past. Indeed it has been felt desirable that legislation be enacted giving both parties the right to come before the Supreme Court on a federal question, in order to secure prompt and uniform construction of federal statutes. See PROCEEDINGS OF AMERICAN BAR ASSOCIATION, 1911, 462, 469. The serious objection to the proposal is the consequent addition to the work of an already over-burdened Supreme Court. See PROCEEDINGS OF AMERICAN BAR ASSOCIATION, *supra*, 482. To justify the decision in the principal case, the statute involved would have to be said to give or secure rights to both parties. Language, in previous cases, might lay a foundation for the construction that each party has a right to have his rights under the statute construed by the Supreme Court. *Seaboard Air Line Ry.* v. *Duvall*, 225 U. S. 477, 486, 32 Sup. Ct. 790; *St. Louis, I. M. & S. R. Co.* v. *Taylor*, 210 U. S. 281, 293, 28 Sup. Ct. 616. This seems hardly a permissible construction in the light of the above cases, especially as the defendant claimed the benefit of no exception or proviso.

HISTORY OF LAW — PROCEDURE AND COURTS — RIGHT OF COURT TO HEAR NULLITY SUIT IN CAMERA. — A proceeding to nullify a marriage on the ground of the husband's impotence was heard in camera by order of the judge. Later the wife to protect her reputation secured transcripts of the evidence given and